



In addition, the department agrees that it is important to maintain pharmacy and prescription availability for injured workers. The department does not believe the rate cuts will lower accessibility at this time because the rates approximate existing rates in the workers' compensation market in Montana. However, the department will monitor this issue and adjust rates if needed in the next annual adoption of the prescription drug fee schedule.

Comment 2: Several persons commented that there are significant differences between the costs to supply prescription drugs on a workers' compensation claim versus the costs to supply prescription drugs to other health claims. The commenters included differences such as lack of billing information, additional time spent adjusting fees after liability has been accepted, negotiating and collecting payment, and carrying accounts receivable longer than other claims. The commenters noted a study researching these differences. The commenters indicated these differences require higher reimbursements for workers' compensation prescriptions and make it inappropriate to set reimbursement rates at about the same amount as Medicaid levels. In addition, a pharmacy benefit manager commented that the rates could likely make offering its services in Montana cost prohibitive for insurers and that insurers would then lose the additional claims administration and monitoring services it provides.

Response 2: According to data compiled from Plan II and Plan III Montana workers' compensation insurers, PPO and pharmacy benefit manager (PBM) contracts that have been in place for more than one and a half years have reimbursement rates equal to or lower than those proposed in this administrative rule. These contracts include and account for the differences in the cost to process workers' compensation prescription claims. The proposed rule represents an average of the currently existing workers' compensation reimbursement rates in Montana for at least 60% of the workers' compensation market. The proposed rule brings the last remaining portion of the workers' compensation market in Montana in line with the rates already in existence for the majority of workers' compensation prescriptions.

Comment 3: A comment was received that ARM 24.29.1416(1) should be clarified to add "prescription drugs" and "medical equipment and supplies" to the list of items covered by the rule.

Response 3: The department agrees and has amended the rule accordingly.

Comment 4: One commenter urged a smaller percentage reduction for generic drugs, out of concern that the proposed rates might create an incentive for the use of brand-name drugs over the use of generic drugs.

Response 4: The language in 39-71-727(1) and (2), MCA, clearly requires the use of generic drugs over the use of brand-name drugs according to its provisions. The department believes the statute properly addresses this concern already.

Comment 5: There was a concern about whether the new rule would maintain the injured workers' ability to choose a pharmacy or provider and not punish providers for providing out of network care.

Response 5: In order to promote cost containment of medical care, the current language in 39-71-1102, MCA, encourages the development of preferred provider organizations by insurers. After the injured worker is notified in writing by the insurer of a preferred provider, the insurer is not liable for any charges from a nonpreferred provider. This does not prohibit the injured worker from choosing the initial treating physician. In addition, the new rule states if the injured worker has personally paid for prescription drugs prior to the acceptance of the claim, the injured worker is entitled to a refund of the price paid once liability for the claim has been accepted by the insurer.

Comment 6: One commenter suggested the reimbursement rate for brand name and generic drugs should be limited to the lesser of the price paid or the fee scheduled amount. The commenter stated that the "lesser of" language is standard for the industry and that this language prevents a pharmacy from being reimbursed for more than it charged for a drug.

Response 6: The department agrees and has amended the rule accordingly.

Comment 7: A commenter suggested clarifying that insurers reimburse for prescription drugs only when the injured worker produces a written receipt.

Response 7: The department believes the requirement of proper written documentation is a good idea and has amended the rule accordingly.

Comment 8: The same commenter suggested pharmacies must, upon request, reimburse an insurer for the difference in the amount paid by the injured worker and the amount provided by the fee schedule.

Response 8: The department agrees this clarification is needed, as this was the original intent of the rule. The rule is amended accordingly.

Comment 9: A third-party payer of medical bills agreed it is important to reimburse injured workers for out of pocket prescription expenses which may occur early in the life of a claim as outlined in New Rule I. The commenter indicated the rule acts as a disincentive to prevent claimants from paying for prescription drugs above fee scheduled amounts.

Response 9: The department acknowledges the comments. However, the department notes the commenter is incorrect on the final point in that a claimant is reimbursed the full amount paid for prescriptions prior to acceptance of liability by an insurer. The insurer is then entitled to a refund from the pharmacy of the amount above the fee scheduled amount as indicated in the amendments below.

Comment 10: A commenter expressed the concern that the use of average wholesale price (AWP) instead of the cost to a pharmacy inflates the cost to the insurer since it does not reflect the net cost actually paid by a pharmacy.

Response 10: Based on a recent national study of the means by which states' workers' compensation programs reimburse drug prescription, 27 out of 29 states utilized AWP for their rate schedule. The department therefore feels this is currently the best methodology to use in determining a prescription drug fee schedule until a better mechanism is developed.

4. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

24.29.1416 APPLICABILITY OF DATE OF INJURY, DATE OF SERVICE

(1) The amounts of the following types of payments are determined according to the specific department rates in effect on the date the medical service is provided, regardless of the date of injury:

- (a) medical fees; ~~and~~
- (b) hospital charges;
- (c) prescription drugs; and
- (d) medical equipment and supplies.

AUTH: 39-71-203, MCA

IMP: 39-71-704, MCA

5. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (24.29.1529) PRESCRIPTION DRUGS FEE SCHEDULE

(1) and (1)(a) remain as proposed.

(b) Reimbursement rates to retail pharmacies for brand-name drugs are limited to the lesser of the average wholesale price (AWP), minus ~~45~~ 10 percent, or the price charged for ~~of~~ the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product.

(c) Reimbursement rates to retail pharmacies for generic-name drugs are limited to the lesser of the AWP, minus 25 percent, or the price charged for ~~of~~ the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product.

(d) and (2) remain as proposed.

(a) The insurer, when accepting liability for a condition for which a prescription drug has been prescribed, must, upon receiving a proper receipt, reimburse the injured worker the retail price paid.

(b) After the injured worker has been reimbursed by the insurer, the pharmacy must, upon request by the insurer, reimburse the insurer for the difference

in the amount paid by the injured worker and the amount provided by the fee schedule.

AUTH: 39-71-203, MCA

IMP: 39-71-727, 39-71-743, MCA

/s/ MARK CADWALLADER

Mark Cadwallader  
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner  
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 13, 2007